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1979

# State of Utah v. Richard S. : Brief of Respondent

Utah Supreme Court

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Appeal from  
Roland Anderson et al vs. State of Utah  
Court for Weber County, Case No. 10-10-10  
-----

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FILED

APR 29 1979

IN THE SUPREME COURT OF THE STATE OF UTAH

---

STATE OF UTAH, in the )  
interest )

Of )

CASE No. 16219

RICHARD S., a person under )  
eighteen years of age. )

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BRIEF OF RESPONDENT

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Appeal from a dispositional order of Judge L.  
Roland Anderson of the First Judicial District Juvenile  
Court for Weber County, State of Utah.

---

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH, in the	:	
interest of	:	
RICHARD S.,	:	Case No. 16219
a person under eighteen	:	
years of age.	:	

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BRIEF OF RESPONDENT

---

STATEMENT OF THE NATURE OF THE CASE

Appellant has appealed from an Order entered on December 12, 1978, by Judge L. Roland Anderson, First Judicial District Court for Weber County, which required appellant to pay restitution for damage to five motor homes. (R. 17). Appellant admitted to damaging one motor home. All charges concerning any other motor homes were dismissed by the Juvenile Court. (R. 16).

DISPOSITION IN LOWER COURT

On September 20, 1978, appellant appeared before the Juvenile Court and entered a plea of true to the petition charging him with unlawfully entering one motor home with intent to commit a felony or theft. (TR. 1 ). The court recommitted the juvenile to the State Youth Development Center (R.4). In the same order the time for a determination

on restitution was set for October 11, 1978, (R. 4).

On October 16, 1978, a second petition was filed charging appellant with four additional counts of damaging motor homes (R. 6). Said offenses were committed at the same place, time, and date as the original offense which appellant admitted. Appellant denied the additional charges and trial was set for November 21, 1978. On that date the court granted appellant's Motion to Dismiss all four charges. (R. 12). On November 21, 1978, and December 12, 1978, a restitution hearing was held at which the court ruled that appellant could be ordered to make restitution for damages to all five motor homes, although he had admitted to damaging only one and all other charges were dismissed. An order to that effect, plus a recommendation to the Youth Development Center that said restitution be paid as part of parole from the YDC, was entered on December 12, 1978. (Legal File 17).

#### RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the Juvenile Court's order that he pay restitution for damages to all five motor homes and also that the Court nullify the Juvenile Court's recommendation that restitution be made a condition of his parole from the Youth Development Center. Respondent asks that the case be remanded for findings as to the amount of damages to the one vehicle which appellant admitted damaging



and for affirmance of the Juvenile Court's recommendation that restitution in a modified amount be made a condition of parole.

### STATEMENT OF FACTS

Respondent agrees with appellant's Statement of Facts with the following exceptions:

1. On page 5 of Appellant's Brief he somewhat mischaracterizes the statements of the county attorney regarding the single criminal episode statute (U.C.A. §76-1-402(2)). Mr. Gladwell did not admit that the instant situation was the type contemplated by the statute, but rather that the adult criminal code has never been adopted as part of the Juvenile Court procedure and is not binding in determining whether a juvenile is delinquent. (TR. 15). Nonetheless, the court did dismiss the charges.

### ARGUMENT

I. Respondent does not contest appellant's arguments in Points I and II of his brief, pp. 7-12.

II. THE JUVENILE COURT DID HAVE JURISDICTION TO CONDUCT A RESTITUTION HEARING AND MAKE AN ORDER AND RECOMMENDATION REGARDING RESTITUTION.

It is true, as appellant states in Point III of his brief, that the Juvenile Court is a statutory court of limited jurisdiction. This court said in R. v. Whitmer, 515 P.2d 617

(Utah 1973) that the Juvenile Court has only those powers which are specifically granted by the Juvenile Court Act.

Appellant suggests that the Juvenile Court did not have jurisdiction to entertain the issue of restitution after he had already been recommitted to the Youth Development Center. This argument is based upon the language of Utah Code Annotated, Section 78-3a-40 which states in part:

The continuing jurisdiction of the court shall terminate (1) upon order of the court, (2) upon commitment to the state industrial school for an indeterminate period in excess of 90 days, and (3) upon commencement of proceedings in adult cases under section 78-3a-19. The continuing jurisdiction of the court is not terminated by marriage. (Emphasis added.)

The purpose for the provisions of this statute terminating Juvenile Court jurisdiction upon commitment to the Youth Development Center is only to allow the Youth Development Center officials to administer their own programs and to make necessary decisions regarding the youth and his treatment plan. The Youth Development Center has sole control over the juvenile and his activities, his release and parole, after the court has committed him, and the Youth Development Center officials need not report back to the Juvenile Court. This was the clear intent and purpose of Utah Code Annotated, Section 78-3a-40, quoted above. It was not intended to prohibit the Juvenile Court from completing a proceeding it had already commenced against a particular juvenile.

In the present case, there is no question but that the Juvenile Court has jurisdiction to hold a restitution hearing and to make an order regarding restitution even after the appellant had been recommitted to the Youth Development Center.

Utah Code Annotated, Section 78-3a-39, which enumerates the various dispositions the Juvenile Court may make after an adjudication of delinquency, provides that:

"\* \* \* (4) The court may commit the child to the state youth development center or other similar institution that may be available...."

It also provides that:

"(7) The court may order that the child be required to repair or replace or to otherwise make restitution for damage or loss caused by his wrongful act, and may impose fines in limited amounts."

And further, the statute provides that:

"(17) The court may make any other reasonable orders which are for the best interest of the child or are required for the protection of the public, except that no person under the age of eighteen may be committed to jail or prison. The court may combine several of the above-listed modes of disposition where they are compatible."

The order by which appellant was recommitted to the Youth Development Center (R.4) also included an order that restitution would be determined at a later date. According to Utah Code Annotated, Section 78-3a-39, the court does have the authority both to commit a youth to the Youth Development Center and to provide for restitution. Where appropriate,

several modes of disposition can be combined, Section 78-3a-39 (17). That is precisely what happened in this case. The same order combined the commitment to the Youth Development Center and a provision for restitution to be set. Surely by doing one, the Juvenile Court does not divest itself of the jurisdiction to do the other.

Utah Code Annotated, Section 78-3a-39(17) states that any reasonable order necessary to protect the public may be made. In this case, restitution was necessary to even partially compensate the victim of appellant's acts for the damages he suffered. On September 20, 1978, when the order recommitting appellant to the Youth Development Center was made (R. 4), it was determined at the same time that restitution should be made. (TR. 2). However, on that particular date it was impossible for the court to determine what the amount of restitution should be. (TR. 2,3). Therefore, the court left that matter open and scheduled a later hearing only for the purpose of determining the amount of restitution. (TR. 3). As the Juvenile Court said at the later hearing, because the matter was commenced before the commitment to the Youth Development Center and was only continued for the determination of amount of restitution, the court retained its authority to order restitution. (TR. 7,8).

The unusual circumstances of appellant's commitment to the Youth Development Center should also be considered by

this court. At the time of the occurrence at issue here, the appellant had already been committed to the Youth Development Center for other offenses. He was home either on an extended home visit (TR. 1) or AWOL (TR. 4), when he was involved in the incident at Freeway Mazda. He was returned to the Youth Development Center by a police officer who arrested him on the night of the break-ins. (TR. 4). Appellant ran away from the Youth Development Center the same night, in fact "before the police officer hardly even got off the grounds." (TR. 4). About two weeks later, he returned on his own to the Youth Development Center and was there at the time the delinquency hearing was held on September 20, 1978. (TR. 1). The order recommitting appellant to the Youth Development Center merely confirmed and approved the status quo. In fact, the recommitment order was made effective nunc pro tunc to September 4, which was the date appellant voluntarily returned to the Youth Development Center.

It would be highly inequitable to allow the unusual nature of his commitment and presence at the Youth Development Center to relieve appellant of his responsibility to make restitution to the victim of his acts. The Juvenile Court had the jurisdiction, the authority, and the public duty to order restitution in this case.

In his brief, page 14, appellant cites State of Missouri ex rel B. C. C. v. Conley, 568 S.W.2d 608 (Mo. 1978),

which discusses a Missouri statute similar to Utah's which terminates Juvenile Court jurisdiction upon commitment to the state training school. In that case, the Missouri court said:

Once a juvenile is committed to and received by the division of youth services for internment in the state training school for boys at Boonville, the committing juvenile court loses jurisdiction over the juvenile unless jurisdiction is returned to it in an appropriate proceeding. 568 S.W.2d at 608. (Emphasis added).

In the present case, the restitution hearing was clearly an "appropriate proceeding" to return jurisdiction to the Juvenile Court as the court is specifically authorized by statute to order restitution from an adjudicated delinquent, Utah Code Annotated, Section 78-3a-39(17). The restitution hearing was necessary to enable the court to make a proper order, and was thus an appropriate proceeding over which to exercise jurisdiction.

The facts of the Conley case, supra, are not even remotely similar to those of the instant situation, and the jurisdictional statute is only mentioned in passing as the Missouri court discussed the issue of whether a juvenile should be allowed to have his case heard before a different judge. The case is certainly not very helpful in the context of the present case.

Likewise, the other two cases cited by appellant, In the Matter of A\_\_\_N\_\_\_, 500 S.W.2d 284 (Mo. App. 1973), and Matter of Appeal in Maricopa County, Etc., 572 P.2d 451 (Ariz. App. 1977), do not support the conclusion urged by appellant.

(See Appellant's Brief, pp. 13-15). Both cases stand only for the proposition that juvenile courts are courts of limited jurisdiction and may only make dispositions which are specifically authorized by statute. That theory is not contrary to respondent's position in this case. The State does not suggest that a juvenile court can make a disposition which is not authorized by the Utah Juvenile Court Act. However, as has been previously discussed, all dispositional orders made by the court in this case are specifically authorized by that Act, Utah Code Annotated, Section 78-3a-39.

Appellant also contends that it was not within the Juvenile Court's power to recommend to the Youth Development Center that restitution be made a condition of his parole. (Appellant's Brief, p. 15). It is interesting to note that it was appellant's counsel who suggested that very procedure to the court. (TR. 33).

The juvenile courts are authorized to make recommendations to probation or parole departments regarding the collection of restitution. Utah Code Annotated, Section 78-3a-39(7), quoted supra, authorizes the court to order restitution. The section immediately following that paragraph, Utah Code Annotated, Section 78-3a-39(8), provides as follows:

(8) The court may through its probation department encourage the development of employment or work programs, to enable children to fulfill their obligations under the preceding paragraph of this section,

and for other purposes when deemed desirable by the court.

Thus, the Juvenile Court was authorized to make a recommendation to the Youth Development Center that payment of restitution be made a condition of appellant's parole.

### CONCLUSION

Appellant's brief focuses primarily upon the question of the amount of restitution which was ordered by the Juvenile Court. Respondent does not contest the arguments raised in Points I and II of appellant's brief.

However, respondent does disagree with appellant's contention that the Juvenile Court did not have jurisdiction to conduct a restitution hearing and to order restitution for damage caused by the wrongful acts of the appellant. That issue has been discussed fully herein. The Juvenile Court Act clearly states and intends that the juvenile courts of this State shall have the authority and responsibility to order restitution in appropriate cases. The victim of appellant's acts in this instance has suffered a substantial financial loss. Restitution is certainly an appropriate remedy in this case.

Respondent urges this court to find that the Juvenile Court does have continuing jurisdiction to order restitution and to remand this case to the Juvenile Court for findings and



an order for restitution in a proper amount.

Dated this 23rd day of April, 1979.

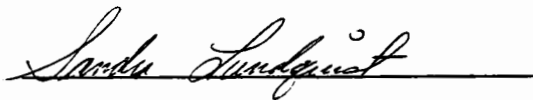
Respectfully Submitted:

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MAILING CERTIFICATE

This is to certify that I mailed 2 true and exact copies of the foregoing Brief of Respondent, postage prepaid, on this the 24<sup>th</sup> day of April, 1979, to Jane A. Marquardt, Utah Legal Services, Attorney for Appellant, at 385 - 24th Street, Ogden, Utah, 84401.

A handwritten signature in cursive script, reading "Linda Lundquist", is written over a horizontal line.